IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W. P. NO.2223 OF 2005

PETITIONER

Ashok Singh, S/o Shri C. D. Singh, aged about 35 years, Occupation-Business, presently Working as Contractor, R/o Thanganpara, Ambikapur, Dist. Surguja (Chhattisgarh).

P.R. No. 2356/05
Presented by Shri Smith Gahani
dated 30-05-05

VERSUS

RESPONDENTS

1. State of Chhattisgarh through Secretary, Public Works Department, Mantralaya, Dau Kalyan Singh Bhawan, Raipur District Raipur [Chhattisgarh]

2. Executive Engineer, Public Works Department, Division No.1, Ambikapur, District Surguja (Chhattisgarh).

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR,

CHHATTISGARH

Writ Petition No.2223 of 2005

Ashok Singh

- Versus -

State of Chhattisgarh & others

POST FOR ORDER ON 22ND AUGUST, 2005

Sd/-
L.C.Bhadoo
Judge

28-8-2005

(55)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2223 of 2005

Ashok Singh

- Versus -

State of Chhattisgarh & others

Present: -

Mr. Manindra Shrivastava, Sr. Advocate with Shri Amrito Das, Advocate. : For the petitioner.

Mr. Y.S. Thakur, Govt. Advocate. : For the State/ respondent No.1 & 2.

Before Hon'ble Mr. L.C. Bhadoo, J.

O R D E R

(Passed on 22ND August, 2005)

1. The petitioner, who is a civil contractor, has preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality & propriety of communication dated 17.5.2005 (Annexure P-4) issued by respondent No.2- Executive Engineer, P.W.D. Division No.1, Ambikapur, District Sarguja whereby the petitioner has been asked to make good the loss including interest to the tune of Rs.15,19,000/- within a period of seven days, failing which his deposits and amount due to him under other contracts shall be adjusted against the said amount.

2. The circumstances under which the petitioner has been forced to file this petition are that the petitioner took part in an auction proceeding conducted on 31.12.1997 for award of contract for recovery of toll-tax in respect of Mahan, Moren & Pangan bridges at Kilometers 48/8, 45/4 & 110/6 on Ambikapur-Dhanbar-

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Varanasi road. As against the Government off-set price of Rs.18,70,000/- the petitioner offered a bid of Rs.26,60,000/- and the said bid was considered to be the highest. However, thereafter, the petitioner did not proceed to take contract nor did he enter into any agreement, therefore, the respondents before re-auctioning the right to recover the toll-tax issued notices to the petitioner for entering into agreement but the petitioner failed to enter into the agreement, therefore, the respondents had re-auctioned the said right to collect the toll-tax in which the highest bid was of Rs.17,11,000/- and the contract has been awarded to another contractor namely Shri Parmeshwar Singh. However, on account of that the department had suffered a loss of Rs.9,49,000/- and interest thereon and ultimately, the security deposit of petitioner to the tune of Rs.1,05,833/- has been forfeited and vide impugned notice he has been asked to deposit remaining loss of Rs.15,19,000/- after deducting the security deposit.

3. The case of the petitioner is that since the petitioner did not enter into any agreement, his security amount has already been forfeited and on account of re-auction of right to collect toll-tax the respondents would have received the less amount but the difference amount between his bid and re-auction bid cannot be recovered from the petitioner under any law. As such, the impugned notice is illegal.

4. Return has been filed on behalf of the respondents in which it has been mentioned that knowing fully well and being aware of the terms & conditions of the bid the petitioner participated in the auction proceedings, his bid was accepted being the highest

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bid i.e. Rs. 26,60,000/-, but thereafter, the petitioner failed to execute the agreement, as a result of which, perforce the respondent had to re-auction the right to collect toll-tax and same bid was left for Rs.17,11,000/- due to which the respondents suffered a loss of Rs.9,49,000/- i.e. the difference amount of second bid & petitioner's bid, as per terms & conditions of tender the respondents are entitled to recover the said amount from the petitioner.

5. I have heard learned counsel for the parties.

6. From the above facts, it is admitted position that the petitioner backed out from the bid before entering into the contract/agreement to collect the toll-tax, therefore, the question for determination before this Court is that when the petitioner backed out from his bid and did not enter into any contract/agreement, in the circumstance, the respondents are entitled to recover the difference amount of Rs.9,49,000/- between the petitioner's bid and re-auctioned bid plus interest amount. In this connection, the Constitution Bench of Hon'ble Apex Court while dealing with the similar situation in the matter of **K.P.Chowdhry V State of Madhya Pradesh & others** reported in **AIR 1967 Supreme Court 203** held that:

> "In view of Art. 229 (1) of the Constitution, there can be no implied contract between the Government and any other person, the reason being that if such an implied contract between Government and any other person were allowed, that would in effect make Art. 299 (1) useless, for then a person who had a contract with Government which was not executed at all in the

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manner provided in Art. 299 (1) could get away by saying that an implied contract may be inferred by the facts and circumstances of a particular case. Further if the contract between the Government and another person is not in compliance with Art. 299 (1), it would be no contract at all and could not be enforced either by the Government or by the other person as a contract."

In the above case, a forest contractor, agreed to bid for certain contracts in pursuance of the notification issued by the Divisional Forest Officer, for auction of various contracts in that division. The conditions of auction specified inter alia (1) that any bidder had to sign a sale notice in token of his agreement to abide by the conditions of the contract and to deposit a sum of Rs.500/- as earnest money before he could take part in the bidding; (2) that the sales of contracts beyond the power of sanction of the Divisional Forest Officer were subject to the sanction of the competent authority and the bidder was bound by his bid until orders were passed by the competent authority; and (3) if the successful bidder failed to pay the amount of consideration or to complete the formalities, the earnest money deposited by him was to be forfeited to Government and the contract was to be re-auctioned at the risk of the bidder and any deficiency occurring was to be recoverable from the bidder as arrears of land revenue. The contractor took part in the auction and successfully bid for certain contracts, but however, he failed to execute the agreement, therefore, the contracts were again auctioned in which less amount was received and the action was initiated for

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recovery of difference amount between the contractor bid and second bid. The Hon'ble Apex Court held that since the contractor had not entered into any agreement with the Government, therefore, the Government was not entitled to recover any amount and even such amount could not be recovered under Section 155 of the M.P. Land Revenue Code which provides for recovery of money as arrears of land revenue would therefore, ensure in favour of the Government and enable it to recover the deficiency cannot be sustained. That clause provides for recovery of all moneys falling due to the State Government under any grant, lease or contract and says that they shall be recoverable in the same manner as arrears of land revenue. Since there was no contract, money could not be recovered under Clause (B) of Section 155 of the Land Revenue Code.

7. The same principle applies in the present case, as the petitioner had not entered into any contract with the respondent, therefore, no amount is due against the petitioner under any contract. Similarly, the provisions of Section 155 of the Land Revenue Code is also not attracted in the present case, as the case of the petitioner is not covered under Clause (B) of Section 155 of the Land Revenue Code. As such, on the basis of terms & conditions of the tender the respondents are not entitled to recover the difference amount and interest thereon i.e. Rs.15,19,000/- from the petitioner and the impugned notice is without jurisdiction and not based on any legal founding. The respondents have already forfeited the security amount deposited by the petitioner i.e. Rs.1,05,833/- under the authority and the same within their competence.

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8. In the result, for the foregoing reasons, I am of the opinion that the petition of the petitioner deserves to be allowed and the notice impugned is liable to be quashed. Accordingly, the petition is allowed and the impugned notice dated 17.5.2005 (Annexure P-4) is hereby quashed.

Sd/-
L.C.Bhadoo
Judge

Roshan/-